



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 29 October 2024

Session 6



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Tuesday 29 October 2024

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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
28th Meeting 2024, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Meghan Gallacher (Central Scotland) (Con)

Mark Griffin (Central Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Emma Roddick (Highlands and Islands) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kristen Anderson (Scottish Government)

Ruairidh Anderson (Scottish Government)

William Carlin (Scottish Government)

Ivan McKee (Minister for Public Finance)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Roome (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 29 October 2024

[The Convener opened the meeting at 09:03]

Interests

The Convener (Ariane Burgess): Good morning and welcome to the 28th meeting in 2024 of the Local Government, Housing and Planning Committee. I remind all members and witnesses to ensure that their devices and notifications are on silent.

We have received apologies from Mark Griffin.

I welcome Alexander Stewart and Meghan Gallacher to the committee, and I invite Alexander Stewart to declare any relevant interests.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning, convener. I am delighted to be a member of the committee, as I was a member of the Local Government and Communities Committee for four years in the previous session.

My only declaration of interest is that I was a serving councillor on Perth and Kinross Council for 18 years, between 1999 and 2017.

The Convener: Thank you. I am really glad of your presence on the committee.

I invite Meghan Gallacher to declare any relevant interests.

Meghan Gallacher (Central Scotland) (Con): Thank you. It is great to be back on the committee and I look forward to working with you all once more. My only declaration of interest at present is that I was a serving councillor on North Lanarkshire Council between 2017 and 2021. Of course, if there are any future declarations of interest, I will update the committee as and when appropriate.

The Convener: Thank you. It is great to have you back.

Decision on Taking Business in Private

09:04

The Convener: The second item on our agenda is to decide whether to take items 7 to 12 in private. Do members agree to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024 [Draft]

Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 [Draft]

Town and Country Planning (Amendment of Local Development Plan) (Scotland) Regulations 2024 (SSI 2024/250)

Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 (SSI 2024/253)

09:04

The Convener: The next item on our agenda is to take evidence from Ivan McKee, who is the Minister for Public Finance, on four Scottish statutory instruments. The Minister is joined by Scottish Government officials Kristen Anderson, who is head of development planning; Ruairidh Anderson, who is the senior policy manager; and William Carlin, who is the senior policy manager. I welcome the minister and his officials to the meeting and invite the minister to make a short opening statement.

The Minister for Public Finance (Ivan McKee): Thank you, convener, and good morning to you and to the committee.

I thank the committee for the opportunity to briefly outline the aim and purpose of these new planning provisions. The provisions are contained across four Scottish statutory instruments. They are technical procedural regulations that deliver principles that are already established in the Planning (Scotland) Act 2019.

Scotland's plan-led system of development is widely supported. The regulations are an integral part of the Scottish Government's wider planning reform programme, with which the committee will be familiar. The regulations provide further procedural information regarding amending the development plan and developing masterplan consent areas.

The powers for making amendments to the development plan are set out in primary legislation by changes made to the Town and Country Planning (Scotland) Act 1997 by the Planning (Scotland) Act 2019. The amendment regulations that are being laid regarding the national planning framework and local development plans provide the details of how the primary legislation's

requirements should be fulfilled. We have sought proportionality across both sets of amendment regulations while incorporating appropriate checks and balances to ensure transparency and fairness.

The 2019 act introduced powers to establish masterplan consent areas, and further regulations are required to set out the detailed procedures for their preparation and adoption. Masterplan consent areas are an up-front planning consent that provides certainty and makes places more attractive to investors.

We envisage that MCAs could enable development on a range of scales and in different parts of Scotland. For example, they could be used to help deliver national developments on green ports and new homes in urban and rural areas. Our 2024-25 programme for government commits us to support early adopters through the roll-out of MCAs, and officials are already engaging with several planning authorities to help them move forward.

Each of the sets of regulations that are being discussed today was informed by engagement with key stakeholders and a public consultation. Overall, respondents were generally supportive of the proposed approach in the regulations and I assure the committee that the regulations that are being considered today have taken account of the comments raised through the public consultations. We have published a report with a summary of responses to the consultations.

For the amendment regulations, there was strong agreement with the proportionate approach and the flexibility given to planning authorities in it. Similarly, for the MCA regulations, there was broad agreement that regulations should be kept to the minimum necessary in order to provide for maximum flexibility. Much of the detail of our expectations for MCAs will be set out in guidance that we will publish when the regulations come into force.

The draft Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 mirror the provisions in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 and ensure that MCA schemes are compatible with wider EIA requirements. Respondents to the consultation welcomed that approach.

I welcome the opportunity to answer any questions that the committee might have regarding the details contained in the regulations.

The Convener: Thank you very much minister. Indeed, we have a number of questions. We will look at the SSIs in relation to the LDPs, then we will go to the MCAs and finally to the fourth national planning framework and the EIA MCA.

Starting with the LDPs, when do you expect a planning authority to make amendments to an adopted local development plan? How often would you expect that to happen during the lifetime of a local development plan?

Ivan McKee: Clearly, it will be up to local authorities—the planning authorities—to introduce such amendments. As you are aware, each planning authority is now going through the process of putting their initial local development plans in place under NPF4.

We would not expect alterations to local developments for individual units, for example, or to take account of individual smaller applications. They would be made when the authorities wish to make a change to what they have identified as areas for some types of development within their plans. That could be triggered by a range of requirements.

I would not say that we have an expectation as to how often that would happen, but I would not expect it to be a very regular occurrence. It is up to the planning authorities to bring such amendments forward as they see fit.

The Convener: Continuing on the same subject, what impact might an LDP amendment process have on the planning authority's resources and on already busy planning stakeholders, who might be required to respond to multiple LDP amendments at one time?

Ivan McKee: As I say, I would not expect such amendments to be made very often. My officials can correct me, but I assume that, if planning authorities were to amend an LDP, they would introduce all the various changes that they wanted to make in one go, rather than making several changes to the LDP concurrently.

Regarding the substance of your question, we are very conscious of the resourcing challenges that planning authorities and the whole planning ecosystem are suffering from, and we are taking separate steps, which I will outline to the Parliament in the near future, to help with and address those resourcing challenges.

As I say, it will be up to the planning authorities to decide when they need to make amendments to their LDPs. I am sure that they will factor in the resourcing requirements accordingly.

The Convener: I return to my first question; I want to dig in there a bit more. Why do we need to bring in flexibility? What kind of situation are you imagining where an LDP would need to be amended?

Ivan McKee: The plans are in place for a period of time, and planning authorities will go through the process, with the evidence that they need to provide as part of it, as well as the gate checks. As

you know, we are starting off on that process with a number of planning authorities, which will proceed on the basis of the information that they have available at the time.

Circumstances can of course change, and it may be that the planning authority itself will have a change of direction, or other events may happen that require the authority to review things. Evidence may come to light that the authority was not aware of previously, which would require it to review the LDP. We would not want authorities to be locked into something that could not be amended, so an amending provision should be allowed if it is required.

The Convener: Have any local authorities come with specific concerns, for example that they might want housing or something else that they are already aware of?

There has always been a question floating around the committee regarding local place plans. How do we honour them? Would the proposed flexibility allow local place plans to be accepted into an LDP? I know that many communities are working on their plans now, but if a community is slower off the mark, might accepting a local place plan be possible, using an amendment?

Ivan McKee: Yes: that is exactly one of the situations where an LDP could be amended in the light of new evidence coming forward. If a local place plan that a community produces misses the initial deadline, the planning authority might want to take that on board, and the regulations give it the scope to do that and make provision for it.

Planning authorities have clearly been involved in the consultation on introducing the proposed scope for making amendments under the relevant SSI. However, they are at various stages of pulling together their initial LDPs, so we are not yet at the stage when they would be thinking about amendments.

The Convener: So, it is early days.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, minister. I ask you to say a little bit about the opportunities for the public to examine any proposed amendments to local development plans. What circumstances would bring that about? How long would you expect that public examination to last?

Ivan McKee: I will defer to my officials, who will be able to give more detail on the consultation process through which members of the public will have the opportunity to have sight of the amendments and comment on them. Perhaps Ruairidh Anderson would like to say more about that.

09:15

Ruairidh Anderson (Scottish Government): Thank you, minister. As the minister said, we have set out in the regulations that the full review process should be proportionate and streamlined, bearing in mind the burden that it imposes on planning authorities. The regulations provide for a minimum public consultation period of six weeks. In our own consultation, there was wide-ranging support for such an approach, which was seen as giving local authorities flexibility: 84 per cent of respondents agreed with it. Such plans can be amended to take account of local matters. There is no way for us to foresee what those matters might be across a 10-year cycle. Therefore, regardless of whether any proposed amendment is minor or more wide ranging, it will be up to the planning authority to decide on an appropriate consultation period.

Willie Coffey: Would your proposal change the Scottish ministers' role in the process in any way? What precisely would be their role in any amendment process that might happen locally? Would you have a role in that?

Ivan McKee: Yes. I will let my officials comment on that, too, but it would be the same process as for the creation of an LDP. It would come to ministers and we would consider it in most, or indeed all, cases. Ruairidh, will you clarify that point?

Ruairidh Anderson: Absolutely. Ministers would take a light-touch role on amendments to an LDP. They would be notified of a proposed amendment via the public consultation. We have stipulated that Scottish ministers must be informed at that stage, so that they have a chance to make representations. On top of that, if there were any unresolved representations from public consultation, Scottish ministers would be notified. As per the process for a full local development plan, they would look to appoint an independent reporter, and the same process would then apply.

Willie Coffey: Okay. It sounds to me as though no real change in respect of those matters is being proposed or tabled this morning. Minister, thank you very much for your replies.

The Convener: We come now to Alexander Stewart, who has questions on master consent areas.

Alexander Stewart: The requirement to hold public consultation events for master consent area schemes is limited to those authorising major or national developments. That could exclude consultation on an MCA that authorises up to 49 new homes in a single development. Why is that the case, and what repercussions could there be?

Ivan McKee: Again, I will ask my officials to clarify the specific details on that. The MCA process would broadly follow the existing process for planning applications. There would be an opportunity for members of the public to comment, and there would be consultation, depending on the scope and scale of the proposal. Ruairidh, will you clarify that point?

Ruairidh Anderson: I will hand over to Kristen for that.

Kristen Anderson (Scottish Government): As the minister said, we are looking to align the process with existing procedures for planning applications. Under the development management regulations, the requirement for the equivalent pre-application consultation events is also for national and major developments. We have sought to align the process with existing processes as far as our consenting is concerned.

Alexander Stewart: Why is there no requirement for MCA documentation to be made available in public libraries and council offices? That has been the standard approach to local development plans in the past. Why might there be a change for master consent areas?

Ivan McKee: We are comfortable that its being available online is sufficient. I understand that that will have been part of the consultation process. Kristen, do you want to comment on the specifics?

Kristen Anderson: An MCA is more akin to a planning consent rather than a local development plan, and again we sought to mirror more of the provision under the development management regulations. What we have tried to do is balance requirements with regard to making hard copies available and the cost to authorities while ensuring transparency in respect of access to allow people to get involved. However, I point out that, under regulation 7 of the MCA regulations,

“the ... authority must make a copy of the masterplan consent area scheme”—

that is, the document that gives consent—

“available for inspection at an office of the planning authority.”

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning to the minister and his officials. Continuing with the previous line of questioning, I want to ask why a consultation period of 30 days has been chosen for MCAs. Is that long enough, given some of the criticisms that we as MSPs hear in our local communities about people not having the time to respond? Where did the 30 days come from, and do you feel that that is enough time for communities to respond?

Ivan McKee: That is a good question, and I would note first of all that the consultation period is longer than that for planning applications, which is

typically a minimum of 21 days. A 30-day period is the longest in the various existing regimes—in this case, the environmental impact assessment process that we had to consider. Therefore, we asked in the consultation whether 30 days were sufficient, and there was overwhelming support for the proposal. Indeed, 73 per cent of those who took part in the consultation indicated that that was sufficient time. Therefore, we think that that period is long enough, and it strikes a balance between providing an opportunity for engagement and giving interested parties the scope to comment, and keeping the process moving.

Fulton MacGregor: Thanks for that, minister.

Under what circumstances do you expect a hearing on a proposed MCA to happen? Will planning authorities be required to revise MCA proposals in the light of any hearings that are held?

Ivan McKee: There is always a process to be gone through to get an MCA approved, and the local authority absolutely has the scope to alter it throughout the process on the basis of any input that it might receive. The MCA process is designed to be a proactive one, in which the planning authority identifies the needs and works with partners collaboratively to take forward something that it thinks will meet those needs. On the specific question, hearings would be required in circumstances where the scheme covered a national development as identified in NPF4.

The Convener: I just wanted to pick up on the issue of the MCAs. My understanding is that, once the regulations are brought in, the detail itself will be left to guidance. I am a bit concerned about that; as you have said, a 30-day period is longer than 21 days, but we could be talking about quite big areas being covered by different pieces of work. It might not just be housing, but could be housing, roads and other pieces of infrastructure. Indeed, in your opening remarks, you mentioned the green freeports as places where MCAs might be used.

I am just a bit concerned about our passing these regulations and then the detail coming through in guidance. We have already seen the challenges that have arisen from NPF4 being introduced and bedding in, with planners feeling a sense of challenge in ensuring that biodiversity is right up there as a key element of the national planning framework that needs to be considered. I just want to understand that a bit more, because, for me, the problem is that guidance can be changed and is therefore more flexible than regulations.

Ivan McKee: Again, I will let Kristen Anderson come in on the detail of that, but I highlight that the 30-day period is specified in the SSI. The

guidance is really just—as it says—to assist those who are going through the process in how they take things forward.

I will let Kristen talk you through the specifics of what the engagement process would look like for larger MCA applications.

Kristen Anderson: For larger MCA schemes that cover bigger developments there is a requirement for the equivalent to pre-application consultation, which would be two public events. That is an opportunity for early, meaningful engagement before the process reaches that for formal representations, when there will be further opportunities for people to get involved.

The Convener: Could you clarify one point? Is that within the 30-day window?

Kristen Anderson: No—it is ahead of that.

The Convener: Okay—so there is even more time, and even more preamble, in a way, for people to get involved.

Kristen Anderson: Yes; there is the pre-application consultation, and then the local authority will hold the first public event, which is an opportunity for it to tell people about the proposals for its MCA scheme, and to take feedback. There is then a second event in which the authority can provide feedback on how it may have adjusted its proposals. It will then finalise the scheme in a document on which it will invite formal representations to be made.

The Convener: Okay, thank you.

We move on to questions on the national planning framework.

Emma Roddick (Highlands and Islands) (SNP): Good morning, minister. Under what circumstances would you expect to use the power to amend an adopted national planning framework?

Ivan McKee: The national planning framework can be reviewed in a number of ways, but specific amendments would be at the discretion of ministers, where we see that a significant change to one of the policies has come to light and we feel that there needs to be an amendment. We do not expect that to happen very often, but we have that provision, if it is required, if we see that something significant has arisen and there is a need to address that.

Obviously, we are going through a process in which NPF4 is still bedding in. As it is a new approach to planning, we are working through and issuing guidance letters and so on as things come up. If we came to a situation where we felt that there was a need to amend one or more of the policies, we would have the scope to do that. At present, however, we have no expectations or

plans to address anything specific that has come to light through such amendments.

Emma Roddick: Okay. Why have you chosen the issues of combating rural depopulation, protecting disused rail infrastructure and preserving peatland as worthy of special consideration in the drafting of amendments?

Ivan McKee: I will ask officials to comment on the specifics of why those areas were included.

Ruairidh Anderson: It is, quite simply, to mimic what is already in the overlaying act, and what needs to be considered for consistency in the full NPF creation. We are mimicking that process and those considerations to ensure that, when the NPF is being amended, full consideration is still given to those aspects.

Emma Roddick: Finally, it is important to highlight that decisions around frameworks, development plans and similar things can be a great way for local people to have an active input into what their area does or does not need, without it being about a specific application. Folk often wait to object to individual applications, rather than feeding in at those stages.

What can councils, national Government, other individuals and members of this committee do to encourage participation in local development plan consultations, including on the amendments between each full review?

Ivan McKee: The amendments to NPF4 would be done at a Scotland-wide policy level, but with regard to local development plans and local specifics, it is important that local groups and interested parties and individuals take the opportunity to input to local development plans as councils and planning authorities bring those forward.

We have talked today and in earlier committee sessions about the importance of encouraging local communities to bring forward their local place plans to feed into that process. It is important that we highlight that where we can to local interested parties so that they have the opportunity to feed into those LDPs.

09:30

The Convener: I have a couple of questions to clarify the process around the environmental impact aspect of the masterplan consent areas. As I understand it, if a local authority designates an area as an MCA, it has to do an overall environmental impact assessment on the whole MCA. Is that correct?

Ivan McKee: That is correct, unless officials are going to tell me that there is more nuance to it.

The Convener: I do not think that anyone is moved to speak.

One of my concerns is that if a local authority designates an area as an MCA and it does the overarching environmental impact assessment, once the development has been decided on—for example, for housing or roads—we could lose that nuance and miss out something in that overarching area.

Ivan McKee: It is a legitimate point. I think that William Carlin will come in in a minute on this, but I understand that the environmental impact assessment would be done on the basis of the proposal for the MCA—what was going to be allowed to happen in the MCA—so it would be designed to cover that provision. What you are allowed to do in the MCA must be aligned with what has been approved, which would have the EIA associated with it. William, do you want to comment on that?

William Carlin (Scottish Government): I will just add clarification. The EIA is specific to certain types of development—not every masterplan consent area will require an EIA. The projects within them trigger the EIA requirements based on what the activity is. There is then a screening process to ensure that the projects that are under consideration are considered for their likely significant environmental effects.

In a situation in which the project triggers an EIA, that EIA will be very much like what we already have under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, in that the project must be subject to an environmental report that identifies the environmental effects of that project, and people must be given an opportunity to feed into that process. That is to ensure that there are no surprises and that the means to avoid, mitigate, reduce or offset the effects are identified and communicated in a public context to the parts of the public that will be affected or are likely to have an interest. Therefore, having communication at the heart of the EIA is delivered through the EIA process. Does that clarify matters?

The Convener: That is helpful. We have brought in the national planning framework, which is putting biodiversity right up there. I know that it is early days and it is still bedding in, but I see that we have problems at a local level with attending properly to biodiversity. I am hearing about situations in which councils are continuing with old practices around biodiversity that need to disappear. One of my concerns about the masterplan consent areas is that we would have an overarching EIA—although I hear your point that it gets triggered only if certain projects are to occur within that masterplan consent area—but we

are not seeing best practice come through around biodiversity.

We could create a situation where we do that blanket EIA and then, down the line, realise that we missed something within that context. Do you see what I mean? I am talking in the abstract—I do not have a specific example because we are in an abstract situation as we start to understand more about our impacts on biodiversity.

William Carlin: Minister, is it okay for me to tackle that?

Ivan McKee: Absolutely—please do.

William Carlin: The environment is complicated, and our ecosystem is complex, so planning authorities go to a lot of effort to understand their environment and the impacts of development on it. It is not impossible that things will be missed, but the EIAs open the process up for public consultation as part of the MCA development. It is not just a single body bringing it together—there is an opportunity to draw people, communities and environmental non-governmental organisations together, in order to feed into that.

I cannot say that an environmental implication is identified in every case, but we do a comprehensive and sophisticated environmental assessment. At the end of the day, the decisions have to be taken on the basis not just of the development but of the likely environmental effects. That is a sophisticated and complicated thing that planning authorities do on a regular basis.

The Convener: I see that Ruairidh Anderson wants to come in as well.

Ruairidh Anderson: I have something to add for clarification. In light of the convener's question around the NPF4 and biodiversity in particular, I draw attention to the NPF4 delivery programme that was published yesterday. We have set a priority to produce version 2 of the guidance on that, which incorporates work on a biodiversity metric.

The Convener: That is great—thank you for letting me know about that.

Minister, I have one more question around the EIAs. Who will pay for the environmental impact assessments that are associated with the MCAs? Will the planning authority be required to do so while the MCA scheme is being developed, or will the cost fall to the eventual developer?

Ivan McKee: There is scope within the regulations for planning authorities to pass that cost on to the developer. That scope has been built in specifically with that situation in mind.

The Convener: I am sure that that is very welcome news to our struggling planning

authorities in relation to the need for us to move to full cost recovery.

We have come to the end of our questions, so many thanks for giving evidence this morning.

We turn to agenda item 4, which is consideration of the motion on the Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024. I invite the minister to move motion S6M-14644.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024 [draft] be approved.—[*Ivan McKee.*]

Motion agreed to.

The Convener: The committee will publish a report setting out its recommendations on the instrument in the coming days.

We now turn to consideration of the motion on the second instrument, the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024. I invite the minister to move motion S6M-14815.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 [draft] be approved.—[*Ivan McKee.*]

The Convener: I will make a comment about a concern that I have already brought up in the evidence session. I absolutely want to see environmental impact assessments and I agree with the importance of their connection to a masterplan consent area scheme.

However, as things evolve, I want us to be vigilant and really aware that we might need to readdress EIAs where we start to understand that there is that complexity in relation to biodiversity that we were discussing earlier. We might need to revisit that approach if we see that masterplan consent area schemes are allowing us to run away and not give good enough consideration to what is critical for life in Scotland and life on earth.

The question is, that motion S6M-14815, in the name of Ivan McKee, be agreed to.

Motion agreed to,

That the Local Government, Housing and Planning Committee recommends that the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 [draft] be approved.

The Convener: The committee will publish a report setting out its recommendations on the instrument in the coming days.

With regard to the two negative instruments on planning—the Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 and the Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024—I am minded to reflect on the evidence that we have heard today and bring them back to the committee next week. Are members content to do so?

Members *indicated agreement.*

Building (Scotland) Amendment Regulations 2024 (SSI 2024/247)

The Convener: We turn to the final negative instrument. If members have no comments to make about the building regulations, is the committee agreed that we do not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

The Convener: We agreed to take the next agenda items in private, so I now close the public part of the meeting.

09:42

Meeting continued in private until 10:23.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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